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Type of Instrument: JUDGMENT OF FORECLOS

Recorded: 1/8/2019

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Index Number: 17 605599 Sequence Number: 124

Plaintiff(s) :

Wells Fargo Bank, NA

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Defendant(s) :

Silvia, John

Attorney(s) :

TAX_MAP_NO:

Liber Page(s):
M00021989-649

ADDITIONAL INFORMATION EXISTS PLEASE SEE DOCUMENT
THIS PAGE IS A PART OF THE INSTRUMENT
THIS IS NOT A BILL

Judith A. Pascale
County Clerk, Suffolk County

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HON. JOSEPH C. PASTORESSA

PRESENT: _____
JUSTICE OF THE SUPREME COURT

At Part 34 of the SUPREME Court, held in the County of Suffolk at the _____ Courthouse thereof, AT 400 CT Street RIVERHEAD NY 11901 on the 13th day of December, 20 18

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----------X INDEX NO.: 605599/2017

Wells Fargo Bank, NA,

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Plaintiff(s),

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-v-

John Silvia, Melissa S. Silvia,

Defendant(s).
----------X

ORDER CONFIRMING REFEREE REPORT AND JUDGMENT OF FORECLOSURE AND SALE

MORTGAGED PROPERTY:
5 St. Francis Boulevard,
Middle Island, NY 11953
SBL #: 377.00, 03.00,004.000,
District 0200

ENTERED: JAN 08 2019
AT: 10:26am

No Dreche

UPON the Summons, Complaint and Notice of Pendency filed in this action on March 29, 2017, the Notice of Motion dated October 26, 2018, the affirmation by Nicole P. Femminella, Esq., the affidavit of merit and amount due by Tiffany Bluford, who is a Vice President of Loan Documentation of Wells Fargo Bank N.A., duly sworn to on May 20, 2017, the supplemental affidavit of merit and amount due by Stacey Daniels, who is a Vice President of Loan Documentation of Wells Fargo Bank N.A., duly sworn to on September 26, 2018, together with the exhibits annexed thereto, all in support of Plaintiff's motion for a Judgment of Foreclosure and Sale; and

UPON proof that each of the defendants herein has been duly served with the Summons and

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Complaint in this action, and has not served any answer to the Complaint or otherwise appeared, nor had their time to do so extended; and it appearing that more than the legally required number of days has elapsed since said Defendants John Silvia and Melissa S. Silvia were so served and/or appeared; and Plaintiff having established to the court's satisfaction that a judgment against defendants is warranted;

UPON the affidavit of mailing reflecting compliance with CPLR 3215(g)(3)(I); and

UPON proof that non-appearing defendants John Silvia and Melissa S. Silvia are not absent, in accordance with RPAPL §1321(2); and

A Referee having been appointed to compute the amount due to Plaintiff upon the bond/note and mortgage set forth in the Complaint and to examine whether the mortgaged property can be sold in parcels; and

UPON reading and filing the Report of Scott Zamek dated October 11, 2018, showing the sum of $316,669.76 due as of the date specified in said Report and that the mortgaged property may not be sold in parcels; and

UPON proof of due notice of this motion upon all parties entitled to receive same, and upon all the prior proceedings and papers filed herein;

NOW, on motion by, Nicole P. Femminella, Esq. of Frenkel Lambert Weiss Weisman & Gordon, LLP, attorney for the Plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee's Report be, and the same is, hereby in all respects ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that the mortgaged property described in the

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Complaint and as hereafter described, or such part thereof as may be sufficient to discharge the

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mortgage debt, the expenses of the sale, and the costs of this action as provided by the RPAPL be

sold, within 90 days from the date of this Judgment, in one parcel, at a public auction at

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BROOKHAVEN TOWN HALL
1 INDEPENDENCE HILL
FARMINGVILLE, NY 11738

by and under the direction of Scott Zamek, Esq. 1 Rabro Dr., Suite #12, Hauppauge, NY 11788-

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4270, 631-851-1400 who is hereby appointed Referee for that purpose; that said Referee give public

notice of the time and place of sale in accordance with RPAPL §231 in

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Brookhaven Review

; and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2[c]) ("Disqualifications from Appointment"), and §36.2(d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the appointing Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees, or its representative is present at the sale of the Referee has received a written bid and Terms of Sale from Plaintiff, it successors, and/or assigns, or its representative as if Plaintiff were physically present to submit said bid ; and it is further

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ORDERED, ADJUDGED AND DECREED that if the Referee does not conduct the sale within 90 days of the date of the judgment, in accordance with CPLR 2004, the time fixed by RPAPL §1351(1) is extended for the Referee to conduct the sale as soon as reasonably practicable; and it is further

ORDERED, ADJUDGED AND DECREED that at the time of the sale the Referee shall accept a written bid from the Plaintiff or Plaintiff's attorney, just as though Plaintiff were physically present to submit said bid; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute Terms of Sale for the purchase of the property, and pay to the Referee, in cash or certified or bank check, ten percent (10%) of the sum bid, unless the successful bidder is Plaintiff in which case no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event the first successful bidder fails to execute the Terms of Sale immediately following the bidding upon the subject property or fails to immediately pay the ten percent (10%) deposit as required, the property shall immediately and on the same day be reoffered at auction; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall then deposit the down payment and proceeds of sale, as necessary, in any ~~local banking institution insured by the FDIC~~ NY Commercial Bank in his/her own name as Referee, in accordance with CPLR 2609; and it is further

ORDERED, ADJUDGED AND DECREED that after the property is sold, the Referee shall execute a deed to the purchaser, in accordance with RPAPL §1353 and the terms of sale, which shall be deemed a binding contract; and it is further

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ORDERED, ADJUDGED AND DECREED that, in the event a party other than the Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after the date of such sale unless otherwise stipulated by all parties to the sale; and it is further

ORDERED, ADJUDGED AND DECREED that, if Plaintiff (or its affiliate, as defined in paragraph (a) of subdivision 1 of section six-1 of the Banking Law) is the purchaser, such party shall place the property back on the market for sale or other occupancy: (a) within 180 days of the execution of the deed of sale, or (b) within 90 days of completion of construction, renovation, or rehabilitation of the property, provided that such construction, renovation or rehabilitation proceeded diligently to completion, whichever comes first, provided however, that a court of competent jurisdiction may grant an extension for good cause; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee, on receiving the proceeds of such sale, shall forthwith pay therefrom, in accordance with their priority according to law, all taxes, assessments, sewer rents, or water rates, which are, or may become, liens on the property at the time of the sale, with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee then deposit the balance of said proceeds of sale in his/her own name as Referee in any local banking institution insured by the FDIC, and shall thereafter make the following payments in accordance with RPAPL§1354, as follows:

NY Commercial Bank

FIRST: The Referee's statutory fees for conducting the sale, in accordance with CPLR 8003(b), not to exceed $500.00 ~~unless the property sells for $50,000.00 or more, OR in the event a sale was cancelled or postponed, Plaintiff shall compensate the Referee in the sum of ,~~

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$_____ for each adjournment or cancellation, unless the Referee caused the delay;

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SECOND: All taxes, assessments, and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute, and any other amounts due in accordance with RPAPL §1354(2). Purchaser shall be responsible for interest and penalties due on any real property taxes accruing after the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The Purchaser shall hold the Referee harmless from any such penalties or fees assessed;

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THIRD: The expenses of the sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, duplicate copies of which shall be annexed to the report of sale;

FOURTH: The Referee shall then pay to the Plaintiff or its attorney the following:

Amount Due per Referee's Report: **$316,669.76** with interest at the note rate from September 26, 2018 until the entry of judgment, together with any advances as provided for in the note and mortgage which Plaintiff has made for taxes, insurance, principal, and interest, and any other charges due to prior mortgages or to maintain the property pending consummation of this foreclosure sale, not previously included in the computation, upon presentation of receipts for said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage, and then with interest from the date of entry of this judgment at the statutory rate until the date the deed is transferred.

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Costs and Disbursements: $ 2688.00 adjudged to the Plaintiff for costs and disbursements in this action, as taxed or calculated by the Clerk and inserted herein, with interest at the statutory judgment rate from the date of entry of this judgment;

Additional Allowance: $ 300 is hereby awarded to Plaintiff in addition to costs, with interest at the statutory judgment rate from the date of entry of this judgment, pursuant to CPLR Article 83;

Attorney Fees: $ 2900 is hereby awarded to Plaintiff as reasonable legal fees herein, with interest at the statutory rate from the date of entry of this judgment;

FIFTH: Surplus monies arising from the sale shall be paid into ~~court~~ The Suffolk County Comptroller by the officer conducting the sale within five days after receipt in accordance with RPAPL §1354(4) and in accordance with local County rules regarding Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that is the Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at such sale and the terms of sale under this judgment shall be assigned to and be acquired by the Plaintiff, and a valid assignment thereof is filed with said Referee, said Referee shall not require Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified in items marked "First", "Second", and "Third" above; that the Referee shall allow the Plaintiff to pay the amounts specified in "Second" and "Third" above when it is recording the deed; that the balance of the bid, after deducting the amounts paid by the Plaintiff, shall be applied to the amount due Plaintiff as specified in paragraph "Fourth" above; that Plaintiff shall pay any surplus after applying the balance of the bid to the

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Referee, who shall deposit it in accordance with paragraph "Fifth" above; and it is further

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ORDERED, ADJUDGED AND DECREED that all expenses of recording the Referee's deed, including real property transfer tax, which is not a lien upon the property at the time of sale, shall not be paid by the purchaser, nor by the Referee from sale proceeds, and that any transfer tax shall be paid in accordance with Tax Law §1404; and it is further

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ORDERED, ADJUDGED AND DECREED that if the sale proceeds distributed in accordance with paragraphs "First", "Second", "Third", and "Fourth" above are insufficient to pay Plaintiff the Amount Due per the Referee's Report as set forth in paragraph "Fourth" above, Plaintiff may seek to recover a deficiency judgment against John Silvia and Melissa S. Silvia in accordance with RPAPL §1371 if permitted by law; and it further

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ORDERED, ADJUDGED AND DECREED that the mortgaged property is to be sold in one parcel in "as is" physical order and condition, subject to any condition that an inspection of the property would disclose; any facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the mortgaged property is located and possible violations of same; any rights of tenants or person in possession of the subject property; prior liens of record, if any, except those liens addressed in RPAPL §1354; any equity of redemption of the United States of America to redeem the property within 120 days from the date of sale; and any rights pursuant to CPLR 317, 2003, and 5015, or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; the Terms of Sale and purchaser assumes all risk of loss or damage to the premises from the date of the foreclosure sale until the date of closing and

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thereafter; and it is further

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ORDERED, ADJUDGED AND DECREED that the purchaser be let into possession of the property upon production in hand of the Referee's Deed or upon personal service of the Referee's deed in accordance with CPLR 308; and it is further

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ORDERED, ADJUDGED AND DECREED that the Defendants in this action and all persons claiming through them and any person obtaining interest in the property after the filing of the Notice of Pendency are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the mortgaged property; and it is further

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ORDERED, ADJUDGED AND DECREED that within 30 days after completing the sale and executing the proper conveyance to the purchaser, unless the time is extended by the court, the officer making the sale shall file with the clerk a report under oath of the disposition of the proceeds of the sale in accordance with RPAPL §1355(1) and follow all local County rules regarding the handling of Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the purchaser or purchasers at said sale default(s) upon the bid and/or terms of sale the Referee may place the property for resale without prior application to the Court unless Plaintiff's attorneys shall elect to make such application; and it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff shall serve a copy of this Judgment with Notice of Entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties or persons entitled to service, including the Referee appointed herein; and it is further

ORDERED, ADJUDGED AND DECREED, that the notice of sale and any adjournments be served upon the Supreme Court Calendar Clerk; and it is further

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Title 365 Inc
420 Rouser Road, Bldg 3
Coraopolis, PA 15108

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SCHEDULE A

DESCRIPTION OF MORTGAGED PREMISES

Title No. BAC-[redacted]

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ALL that certain tract, piece or parcel of land, situate in the Town and Village of Corinth, County of Saratoga and State of New York, bounded and described as follows:

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BEGINNING at a point in the southerly boundary line of Oak Street, formed by the intersection of said southern boundary line of Oak Street with the eastern line of Second Street; and RUNNING THENCE:

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1) Easterly along the said southern boundary line of Oak Street fifty feet; THENCE

2) Southerly at right angles to course one, one hundred and thirty feet the northern boundary line of an alleyway; THENCE

3) At right angles to course two in a westerly direction and along said boundary of said alleyway fifty feet to the above mentioned eastern boundary line of Second Street; and THENCE

4) Northerly at right angles to course three and along said eastern boundary line of said Second Street one hundred and thirty feet to the southern boundary line of above mentioned Oak Street, at the point or place of BEGINNING.

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ORDERED, ADJUDGED AND DECREED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL §1307 and RPAPL §1308 to secure and maintain the property until such time as ownership of the property has been transferred and the deed duly recorded; and it is further

ORDERED, ADJUDGED AND DECREED that, when the Referee files a report of sale, he or she shall concurrently file a Foreclosure Actions Surplus Monies Form; and it is further

ORDERED, ADJUDGED AND DECREED that to ensure compliance herewith, Plaintiff shall file a written report with the court within 6 months from the date of entry of this judgment stating whether the sale has occurred and the outcome thereof

Said property is commonly known as 5 St. Francis Boulevard, Middle Island, NY 11953.

The legal description of the mortgaged property referred to herein is annexed hereto as Schedule A.

DATED: _____

ENTER:

_____

J.S.C.

HON. JOSEPH C. PASTORESSA

GRANTED

DEC 13 2018

JUDITH A. PASCALE
Clerk of Suffolk County

Judith A. Pascale

Our File No.: 01-083992-F00

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

----------X

Wells Fargo Bank, NA,

Not For Legal Use Plaintiff(s),

Not For Legal Use

-v-

Not For Legal Use

John Silvia, Melissa S. Silvia

Defendant(s).

----------X

COSTS OF PLAINTIFF
INDEX NO.:605599/2017
MORTGAGED PROPERTY:
5 St. Francis Boulevard,
Middle Island, NY 11953
COUNTY: SUFFOLK
SBL #: 377.00, 03.00, 004.000,
District 0200

COSTS

Costs before Note of Issue
CPLR Sec. 8201 (1).....$ 200.00

Allowance by statute
CPLR Sec. 8302 (a) (b).....$ 150.00

First at $200.00 at 10%
(not exceeding $200.00)..... $ 20.00

Next $800.00 at 5%
(not exceeding $800.00)..... $ 40.00

Next $2,000.00 at 2%
(not exceeding $2,000.00)..... $ 40.00

Next $5,000.00 at 1%
(not exceeding $5,000.00)..... $50.00

COST TAXED AT $ 21088.00
TIME _____ DAY OF _____
JAN - 8 2019
JUDITH A. PASCALE
CLERK OF SUFFOLK COUNTY

Additional allowance
CPLR Sec. 8302 (d).....$ 50.00

Discretionary costs on motion
CPLR Sec. 8303 (a) (1).....$ 00.00

COSTS $ 400.00

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FEES AND DISBURSEMENTS

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Fee for index number CPLR Sec. 8018(a)	$400.00
Referee's fee to compute per order of the court- CPLR Sec. 8301(a)1,8003(a)	$250.00
Paid for Searches CPLR Sec. 8301(a)10	$608.00
Serving copy Summons & Complaint CPLR Sec. 8301(d)	$625.00
Reproduction costs- CPLR Sec. 8301(a)6	
Fees for publication of Summons CPLR Sec. 8301(a)3	
Certified copies of papers CPLR Sec. 8301(a)4	
Request for Judicial Intervention-CPLR 8020(a)	$ 95.00
Clerk's fee, filing of Notice of Pendency- CPLR Sec.8021(a)10	$220.00
Skip Trace fees-CPLR Sec. 8301(d)	$ 0.00
Motion fees- CPLR Sec. 8020 (a)	$ 90.00
Note of issue CPLR Sec. 8020(a)	

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TOTAL	**$2,688.00**

ATTORNEY'S AFFIRMATION

The undersigned, Nicole P. Femminella, Esq, pursuant to CPLR 2106 and under penalties of perjury affirms as follows:

That she is the attorney of record for Plaintiff in the above-captioned action, that the foregoing disbursements have been incurred in this action and are reasonable in amount, and that the copies of documents or papers charged for herein were actually and necessarily obtained.

DATED: October 26, 2018
Suffolk County, New York

Nicole P. Femminella, Esq.
Frenkel, Lambert, Weiss, Weisman & Gordon, LLP
Attorneys for Plaintiff
Wells Fargo Bank, NA
Main Office: 53 Gibson Street, Bay Shore, NY 11706
(631) 969-3100

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